

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	PS Docket No. 16-128
)	
2016 Biennial Review of)	WC Docket No. 16-132
Telecommunications Regulations)	
)	WT Docket No. 16-138

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

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REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”)¹ submits these reply comments in response to comments filed regarding the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice seeking comment on rules to repeal or modify as part of the 2016 biennial review.² CCA echoes comments from a majority of the wireless industry encouraging the FCC to seize this opportunity to revise and rescind regulations that have become anachronistic as technology has evolved. Specifically, CCA supports the modification or repeal of rules that harm competition of wireless operators. In the same vein, CCA opposes proposals to repeal any rules that protect competition and improve wireless service in rural or hard to reach locations.

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members including vendors and suppliers that provide products and services throughout the mobile communications ecosystem.

² Public Notice, *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, FCC No. 16-149, CG Docket No. 16-124, EB Docket No. 16-120, IB Docket No. 16-131, ET Docket No. 16-127, PS Docket No. 16-128, WT Docket No. 16-138, WC Docket No. 16-132 (rel. Nov. 3, 2016).

I. RULES ADMINISTERED BY THE WIRELESS TELECOMMUNICATIONS BUREAU THAT THE COMMISSION SHOULD REPEAL OR MODIFY.

A. The Commission Should Repeal or Modify Rules that Unnecessarily Hinder Access to or Use of Spectrum.

Wireless carriers rely on flexible access to spectrum to provide robust and ubiquitous wireless service. While many of the Commission's rules advance these goals, a handful of regulations inadvertently increase encumbrances on the use and reallocation of important spectrum, particularly on the secondary market. The Commission should repeal or modify any rules that unnecessarily burden spectrum swaps, leases, or subleases.

First, CCA supports Verizon's proposal that the Commission streamline approval and grant *pro forma* treatment of block-for-block spectrum swaps within the same markets.³ If the FCC were to streamline this process, however, CCA also encourages the Commission to recognize the differences between high- and low-band spectrum. The FCC must balance competitive concerns and review spectrum swaps, for example, that entail the exchange of less valuable spectrum for more. At the same time, spectrum swaps for the same spectrum within the same market are important for efficient allocation and use of valuable resources and should be considered presumptively competitive.⁴ The current filing requirements for spectrum swaps within the same markets and for the same spectrum trigger an unnecessarily burdensome review for transactions that are otherwise straightforward. Therefore, the Commission should grant *pro forma* treatment to such transactions meeting these conditions.⁵

³ Comments of Verizon at 5, IB Docket No. 16-131, ET Docket No. 16-127, PS Docket No. 16-128, WT Docket No. 16-138, WC Docket No. 16-132 (filed Dec. 5, 2016) ("Verizon Comments").

⁴ *Id.*

⁵ *Id.*

Second, CCA encourages the Commission to condense and reform rules for spectrum lease approvals.⁶ The current rules are overly complicated and unnecessary, particularly for straightforward spectrum leases that do not raise competitive concerns. As Verizon suggests, the Commission should create a simple rule that entails prior notification of a spectrum lease, without requiring Commission approval. While CCA supports this proposal generally, CCA also suggests that this rule be limited in scope to apply only to temporary leases ahead of a secondary market sale, and to temporary leases that do not raise competitive concerns or undermine enhanced factor standards of review. The Commission should continue to review secondary market transactions that trigger a more rigorous competitive impact evaluation, to avoid aggressive concentration of the market. In the alternative, and under appropriate circumstances, the Commission should utilize its immediate approval procedures for temporary spectrum leases prior to a secondary market transaction.⁷

Third, the Commission should reform its licensing rules to permit electronic filing of spectrum subleasing applications.⁸ Requiring filings to be submitted through paper copies causes delay and is more burdensome for licensees.

B. The Commission Should Repeal or Modify Rules that Frustrate Wireless Infrastructure Buildout and Deployment.

CCA supports Verizon's proposal for the Commission to withdraw its determination that every wireless facility siting is a "federal undertaking."⁹ The current rules were developed for much larger wireless facilities, such as full-sized towers, and are unnecessary for the now-typical

⁶ *Id.* at 7.

⁷ *Id.*

⁸ *Id.* at 8.

⁹ *Id.* at 6-7.

small wireless sites, which are far less obtrusive, if at all.¹⁰ In particular, it is highly unlikely that mounting a small facility would have any negative impact on historic preservation, and accordingly, requiring such a review unnecessarily imposes an expensive and time-consuming burden on providers.

C. The Commission Should Eliminate Rules that Impose Duplicative Administrative Burdens on Wireless Carriers.

CCA generally supports proposals for the Commission to review and eliminate reporting requirements that generate duplicative or unnecessary reports. Specifically, the Commission should rescind unnecessary or duplicative reporting requirements related to location accuracy compliance, network outage requirements, Wireless Emergency Alert notifications, and filing paper copies of licenses.¹¹ Many of these recordkeeping requirements have not yet been modernized consistent with the current wireless industry.¹² Likewise, such reporting requirements result in substantial burdens and resource costs for wireless providers, often during times of disasters and emergencies. The FCC should modify or repeal these rules consistent with its goals to facilitate information sharing and strengthen and expand network buildout.

CCA also supports Verizon's proposal for the Commission to repeal rules requiring pre-closing authorization of *pro forma* transactions.¹³ The rules are inconsistent depending on the type of license, most of which do not require pre-closing authorization. The Commission should

¹⁰ *Id.*

¹¹ See Comments of the United States Telecom Association at 9-10, WC Docket No. 16-132 (filed Dec. 5, 2016) ("USTelecom Wireline Comments") (opposing costly and burdensome accounting, reporting, and recordkeeping regulations); Verizon Comments at 14-15 (opposing unnecessary outage reporting requirements).

¹² USTelecom Wireline Comments at 9.

¹³ Verizon Comments at 9.

simplify its filing requirements for such transactions, allowing post-closing notification in a single update.

D. The FCC Should Not Rescind or Modify Rules that are based on an Erroneous Assertion that the Wireless Market is Effectively Competitive.

The wireless market is not fully competitive, and the Commission should avoid repealing or changing rules that are based on this inaccurate premise. CCA agrees that the mobile wireless marketplace continues to evolve, as evidenced by competitive carrier T-Mobile US and Sprint consumer offerings, yet the market as a whole is consolidating into the hands of the largest wireless providers. Indeed, though some commenters suggest the market is effectively competitive “by any metric,”¹⁴ this is simply not the case.¹⁵ Evidence demonstrates that the market remains skewed as a result of consolidation and anticompetitive practices that continue to plague the ecosystem.¹⁶ Despite consumers’ increased use of mobile technology, the trend of consolidation has strengthened the duopoly, making Commission oversight more important than ever.

¹⁴ CTIA Comments at 3.

¹⁵ For example, Verizon and AT&T’s combined market share in the Third Quarter of 2016 was over 67% of the market. This more than doubles the combined market share of other competitive carriers such as Sprint and T-Mobile. *See* Statista, “Market share of wireless subscriptions held by carriers in the U.S. from 1st quarter 2011 to 3rd quarter 2016,” *available at* <https://www.statista.com/statistics/199359/market-share-of-wireless-carriers-in-the-us-by-subscriptions/>. As another example, Verizon earned over \$16 million in service revenue for the third quarter of 2016, with AT&T close behind with nearly \$15 million - doubling the service revenues of competitive carriers in comparable markets. *See* AndroidHeadlines, “Here Are The Top 7 US Wireless Carriers In Q3 2016” (Nov. 14, 2016), *available at* <http://www.androidheadlines.com/2016/11/top-7-us-wireless-carriers-q3-2016.html>.

¹⁶ *See* Comments of Competitive Carriers Association at 2-7, WT Docket No. 16-137 (filed May 31, 2016); Reply Comments of Competitive Carriers Association at 2-5, WT Docket No. 16-137 (filed Jun. 15, 2016).

As a result, targeted Commission action to protect market competition is imperative. Accordingly, CCA rejects calls to eliminate the home roaming rule,¹⁷ revise spectrum screens,¹⁸ and rescind any other regulations that are necessary to protect wireless consumers. Further, CCA opposes Verizon's proposal that the Commission "[d]iscontinue the 'enhanced factor' [e]valuation of [t]ransactions."¹⁹ Such an evaluation is a prime of example of the type of light-touch oversight necessary to ensure that secondary market transactions do not stymie competition.

II. RULES ADMINISTERED BY THE WIRELINE COMPETITION BUREAU THAT THE FCC SHOULD REPEAL OR MODIFY.²⁰

A. The Commission Should Repeal Outdated and Unnecessary Universal Service Requirements.

CCA echoes suggestions in the record that the Commission reduce red tape and documentation for Eligible Telecommunications Carrier support.²¹ In particular, the Commission should remove the annual state certification requirement, which no longer serves a function since the Commission can monitor compliance on Form 481.

CCA also supports Verizon's proposal that the Commission should repeal the Universal Service Fund ("USF") high-cost and Lifeline voice service requirements, particularly in areas

¹⁷ Comments of Mobile Future at 6, WT Docket No. 16-138 (filed Dec. 5, 2016).

¹⁸ *Id.* at 7-8.

¹⁹ Verizon Comments at 4.

²⁰ In addition to CCA's proposals herein, CCA cross-references its Petition for Reconsideration filed in the Broadband Privacy proceeding. *See* Petition for Reconsideration of Competitive Carriers Association, WC Docket No. 16-106 (filed Jan. 3, 2017).

²¹ Verizon Comments at 12.

where carriers do not receive support.²² The rule imposes an unnecessary burden on competitive wireless carriers and hinders their ability to support consumers in these areas.

In addition, CCA agrees with CenturyLink's proposal that the Commission undertake USF contribution reform in ways that ease administrability of the fund and that reduce the contribution factor.²³ The current mechanisms for calculation are outdated and complicated. CCA likewise urges the Federal-State Joint Board on Universal Service to promptly issue recommendations on USF contribution reform, as they are long overdue.²⁴

B. The Commission Should Retain the ILEC Pole Attachment Rules.

CCA opposes CenturyLink's proposal to eliminate incumbent local exchange carrier ("ILEC") pole access requirements.²⁵ Competitive wireless carriers require access to ILEC poles to meet consumer demands and provide competitive alternatives. Because elimination of the ILEC requirements would have a detrimental impact on wireless competition, the Commission should reject this proposal.

²² *Id.* at 12-13.

²³ Comments of CenturyLink at 15, WC Docket No. 16-132, EB Docket No. 16-120, WT Docket No. 16-138 (filed Dec. 5, 2016) ("CenturyLink Comments").

²⁴ Indeed, the FCC requested the Joint Board present its recommendations for contribution reform no later than April 7, 2015. *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FN Docket No. 14-28 ¶ 498, fn. 1471; and *Federal State Joint Board on Universal Service; Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket Nos. 96-45, 06-122, GN Docket No. 09-51 ¶ 1, Order, 29 FCC Rcd 9784 (2014). *See also* Comments of Competitive Carriers Association at 29, WT Docket No. 16-137 (filed May 31, 2016); Reply Comments of Competitive Carriers Association at 18, WT Docket No. 16-137 (filed Jun. 15, 2016).

²⁵ CenturyLink Comments at 12.

C. The Commission Should Retain Tariffing Obligations, Especially for Business Data Services.

Verizon suggests that tariffs may no longer be necessary.²⁶ In making this broad statement, Verizon fails to articulate any specific tariffs that the Commission should rescind. If the FCC looks to reform tariff obligations, CCA would oppose eliminating tariffs for Business Data Services (“BDS”). Competitive wireless carriers rely on tariffs for BDS, which is instrumental to wireless backhaul. Removing tariffing obligations for BDS will undermine competition and harm consumers.

D. The Commission Should Not Modify Its Tech Transition Framework.

CCA opposes suggestions that the Commission repeal certain rules related to technology transitions.²⁷ Specifically, CCA opposes Verizon’s suggestion that the Commission repeal rules prohibiting providers from disclosing information about network changes prior to public notice.²⁸ The Commission should maintain rules that will protect competitive carriers as ILECs transition to new technologies. This could be increasingly important as AT&T and Verizon transition away from third generation network technologies. CCA encourages the Commission to look beyond the present day and retain disclosure rules that will protect all wireless carriers and consumers in the longer term.

III. RULES ADMINISTERED BY THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU THAT THE FCC SHOULD REPEAL OR MODIFY.

CCA agrees with suggestions in the record that the Commission should modify the rules to reduce outage reporting frequency.²⁹ The Commission’s outage reporting regime is overly

²⁶ Verizon Comments at 9.

²⁷ *Id.* at 10.

²⁸ *Id.*

²⁹ Verizon Comments at 14.

burdensome; there is no need for a three-part submission process, and as CTIA notes, the timing for an initial report—within 120 minutes—is of questionable utility.³⁰ Outage reporting, therefore, should be simplified and streamlined so that the reporting process does not take away from carriers’ need to focus on the outage itself.

CCA also agrees with Verizon’s proposal that the Commission remove public safety answering point (“PSAP”) notifications, as this becomes an enforcement trap for providers.³¹ These rules are overly complicated for service providers, and are likewise confusing for PSAPs and consumers, and should be repealed.³² Instead, the FCC should focus on rules already in place that foster communication between carriers and PSAPs through network outage reporting, location accuracy and live 911 call data compliance requirements, and voluntary initiatives like the Wireless Emergency Alerts program.

³⁰ See *id.* at 14-15; CTIA Comments at 11; Comments of the United States Telecom Association at 2-3, PS Docket No. 16-128 (filed Dec. 5, 2016).

³¹ Verizon Comments at 15.

³² *Id.*

IV. CONCLUSION.

Many of the Commission's rules are ripe for repeal or modification. CCA echoes a variety of wireless industry representatives encouraging the FCC to ensure its rules are appropriately modified to accommodate evolving technology and facilitate future innovation. CCA therefore asks the Commission to seize this opportunity to revamp its rules to improve wireless competition and service and remove unnecessary burdens on wireless providers.

Respectfully submitted,

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